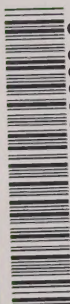


CA201V
HO110
-Z003

Government
Publications



3 1761 11892609 6

What Every Lawyer Should Know



ONTARIO
NEW HOME
WARRANTY
PROGRAM



Digitized by the Internet Archive
in 2024 with funding from
University of Toronto

About the Ontario New Home Warranty Program

New home buyers in Ontario receive substantial warranty protection, set out in the Ontario New Home Warranties Plan Act. A non-profit corporation, the Ontario New Home Warranty Program (ONHWP) administers the Act—registering builders, enrolling new homes and resolving disputes. The Program is paid for by fees builders and vendors pay to register with ONHWP and to enrol the new homes they sell.

The Program also provides information about builders and home buying to consumers, technical assistance to builders, and informs lawyers, real estate agents and mortgage lenders about the Program and the Act.

ONHWP has offices across the Province and reports annually to the Ontario Legislature through the Minister of Consumer and Commercial Relations.

How the Program works

Anyone building or selling a new home in Ontario must register with ONHWP, and enrol each new home or condominium unit. When a home is completed, the buyer and builder sign a Certificate of Completion and Possession (CCP) which confirms to the Program that the sale has taken place. The CCP is also the place for the buyer to note any repairs required. The builder sends the CCP to the Program, and the Program sends the buyer a Warranty Certificate and information package.

Basic warranty protection from the builder is for one year for most items, and two years for some items (see the section, *What is Covered*). Coverage for Major Structural Defects is for seven years. Problems arising during the builder's warranty period should be brought to the builder's attention by the buyer during the warranty period. If the builder does not correct the problems, the Program will help resolve the dispute.

What is Covered

1. **Deposits.** New home purchasers are covered for financial loss, including loss of deposits, to a maximum of \$20,000 if the builder cannot or will not complete the sale through no fault of the purchaser. (This refers to completing the sale of the home, not its construction.)
2. **Incomplete work.** If a person has title to a home or condominium unit and is living in it, ONHWP will compensate them for completion of any unfinished work to a maximum of 2 per cent of the home's price or \$5,000 — whichever is more. The incomplete items must be part of the Agreement of Purchase and Sale. People living in a condominium unit who do not yet have title, and find some work left undone, should call the builder. If they require further help after that they should contact us, and we will contact the builder.
3. **Basic warranty. defects in workmanship and materials (1 year)** The builder warrants for one year from the date on the Warranty Certificate that the home is free from defects in workmanship and materials, is fit to live in and meets the Ontario Building Code.
4. **Two-year warranty:**
 - A) **"Power Train" Items.** For homes enroled after December 31, 1990, the builder warrants that the home is fit to live in, that it is free of violations of the Ontario Building Code's health and safety provisions, that it is free of defects in material or workmanship in the electrical, plumbing, and heating delivery and distribution systems; in the exterior cladding, caulking, windows and doors; and that the building envelope (all parts of the structure that contain the living space) is free of water penetration.

B) Basements leaks. The builder warrants for two years that the basement remains free of water penetration through the foundation. In condominiums, this protection includes all below-ground areas such as parking garages.

5. Major Structural Defects (7 years). For homes enroled after December 31, 1990, the purchaser is protected for seven years against Major Structural Defects. For homes enroled before that date, the protection lasts for five years. Coverage under this provision is by the builder initially, and after the builder's warranties expire, it becomes the responsibility of the Program. Under the Act, a major structural defect is defined as any defect that results in failure of a load-bearing part of the house's structure, or defects in materials or workmanship that adversely affect the use of the building as a home.

6. Delayed closings & Delayed occupancy. Similar rules govern delays in the closing date, and, for condominium units, delays in the occupancy date.

A) Delayed closings. The builder must not delay the closing date without notifying the purchaser. For minor delays of no more than 15 days, the purchaser must be notified at least 35 days before the original closing date. For longer delays, the builder must give at least 65 days' notice and set a new closing date. In either case, the builder gets five days without penalty. Beyond that, purchasers can claim compensation of up to \$5,000 for out-of-pocket expenses resulting from the delay.

To be compensated, the purchaser must close the sale. Purchasers are covered for reasonable moving costs and the cost of storing possessions, plus up to \$100 a day in living expenses. Claim forms are available through builders. Receipts are needed for out-of-pocket expenses, although receipts aren't required for incidental expenses of up to \$25 a day.

Exceptions. There is no compensation for delays caused by things out of the builder's control, such as floods, natural disasters, or fires and strikes.

B) Delayed occupancy in condominiums.

For all condominium purchase agreements signed on or after March 1, 1991, the following rules apply:

- ☐ Every Agreement of Purchase and Sale must give either a confirmed occupancy date, or a tentative occupancy date that is clearly labelled tentative. If it gives a tentative date, the purchaser has the right to receive notice of when he or she will be told the confirmed occupancy date. The notice is to be based on a date or event that will trigger it — for example, the purchaser is told that he or she will be given the confirmed date when the foundation is complete, or when some other stage in construction is reached.
- ☐ The purchaser must be given this notice no later than 120 days before the confirmed date, and no later than 30 days following completion of the roof assembly.
- ☐ If the purchaser is not given notice of the confirmed date by 90 days prior to the tentative date in the original agreement, then the tentative date automatically becomes the confirmed date.

- ❑ The builder is allowed to offer occupancy earlier than the confirmed date, but is not allowed to demand it. The purchaser must consent to it in writing.
- ❑ As is the case for delayed closings for houses, the vendor may extend the confirmed occupancy date **once** by up to 120 days, if the purchaser is given written notice at least 65 days before the confirmed date. The vendor can also have a 15-day extension if the purchaser is given 35 days' notice.
- ❑ In all cases, vendors are permitted a five-day grace period when they give notice to their purchasers. Beyond that, any vendor who fails to give proper notice will be required to give the purchaser compensation of up to \$100 a day for living expenses and other expenses incurred as a result of the delay, to a maximum \$5,000 total direct costs.
- ❑ A vendor is **not** responsible for delays caused by strikes, fires, civil insurrection, floods or "Acts of God."

7. **Substitutions.** Purchasers are protected against substitutions of key elements in a new home or condominium unit, and in condominium common elements. If significant changes are made without approval, purchasers may be able to cancel the agreement and get their deposit back, and/or claim damages up to \$20,000.

Examples of builder substitutions not allowed include:

- Major changes to the original plan
- Reverse ("mirror image") plan
- House model and style of exterior
- Brick color and type of exterior finishes
- Exterior dimensions of the house
- Condominium unit model and style

The Agreement of Purchase and Sale may also give purchasers the right to choose certain colors and styles. If so, the builder cannot substitute these without consent. If he does, purchasers can demand that they be changed back, or the builder must make a cash settlement. Examples include:

- Interior and exterior paint colors (not shadings)
- Design and color of cabinets and countertops
- Color and type of kitchen and bath fixtures
- Style of interior trim
- Floor finishes

If the builder cannot supply a certain choice of color or finish, the purchaser must be notified in writing. She or he then has seven days to make new selections. If they don't, the builder has the right to substitute options of equal or better value.

NOTE: The maximum liability for warranty coverage on any new home or condominium unit is \$100,000. Individual condominium units are protected in the same way as houses. Common condominium elements are also covered from the date the project is registered, up to a maximum of \$50,000 times the number of units, to a maximum of \$2.5 million.

What is not covered

1. **Unfinished homes.** The Program does **not** employ contractors to complete unfinished homes (Although we do compensate for incomplete work in homes that are sufficiently complete to meet the definition of a home under the Act — see the section on *Incomplete Work*). In a custom-built home being constructed under contract, it is the purchaser's responsibility to supervise and pay for completion, and to comply with the Construction Liens Act. For other homes, it is the builder's responsibility to complete the items specified in the Agreement of Purchase and Sale.

2. **Defects in materials**, design and workmanship in anything supplied by the purchaser.
3. **Secondary damage** resulting from defects that are under warranty. The defects themselves are covered, but the personal or property damage they may cause is not.
4. **Normal** wear and tear.
5. **Normal** shrinkage of materials that dry out after construction.
6. **Damage** caused by dampness or condensation caused by the homeowner not maintaining adequate ventilation.
7. **Damage** caused by improper maintenance.
8. **Changes** made by the purchaser.
9. **Settling soil** in land around the house or along utility lines. (However, soil settlement under the building foundation itself is covered.)
10. **Damage** due to the effects of floods or acts of God, the owners, tenants, guests, wars, riots, insurrection, civil commotion or vandals.
11. **Damage** from insects and rodents (except when the construction did not meet the Ontario Building Code).
12. **Damage** caused by municipal services and other utilities.
13. **Surface defects in workmanship** and materials that were noted in writing and accepted by the owner at the date of possession.

- 14. Temporary or seasonal dwellings** (such as cottages) that are not built on a permanent foundation and do not have insulation that would make them habitable year-round.
- 15. New homes** built on existing footings or foundations.

The Condominium Difference

Condominium buyers receive full warranty protection, like any other home buyers. But because condominiums are made up of both individual units and shared areas called the common elements, there are some differences:

- ☐ Condominiums have two sets of warranties: One for the homeowner covering his or her unit and another for the condominium corporation and its Board of Directors, covering the common elements of the building.
- ☐ Once the project is registered as a condominium corporation, a Board of Directors, representing the unit owners, is elected. The Board should arrange with the builder for the Certificate of Completion and Possession on the common elements.
- ☐ Common elements are covered from the date the condominium corporation is registered, but an individual unit is covered from the date of possession.
- ☐ Closing dates depend on registration and are out of the builder's control, so condominium buyers aren't compensated for delays in closing. However, they do have protection (described in the section, What is Covered) against delays in the occupancy date.
- ☐ Condominium unit owners should write to their Board of Directors (once the condominium corporation is registered) about any problems in the common

elements. The Board should then take the complaint to the builder and to ONHWP, if necessary.

- ❑ The Board may then ask ONHWP for a “pre-conciliation meeting,” to bring them together with the builder and an ONHWP representative, who will try to negotiate a settlement. If a settlement cannot be negotiated, the next step is for the Board to ask for a conciliation. This is another meeting between both sides and an ONHWP representative, who will make a written ruling on whether the defects are covered by warranty and, if so, set a time frame for their repair.

Conciliations

When a builder and a purchaser cannot agree on whether an item is warrantable, the purchaser or condominium Board of Directors may ask ONHWP for a conciliation, which takes place at the home in question. The builder’s representative and an ONHWP conciliator will meet the homeowner, and the ONHWP conciliator will inspect the disputed items. The conciliator will produce a written report, usually within 14 days of the meeting, which will rule on whether any of the disputed items are in fact warrantable.

When items are judged warranted, the conciliation is said to be a chargeable conciliation, and therefore counts toward establishing the builder’s after-sales service rating in the Program’s annual publication, *The Home Buyer’s Guide to After-Sales Service*. If the conciliation items are judged non-warrantable, the conciliation has no effect on the after-sales service record.

If a builder does not agree with a conciliation decision, it may be appealed to the Commercial Registration Appeal Tribunal (CRAT) as follows:

When a builder fails to do work requested as a result of a conciliation, ONHWP may have the work done and invoice the builder for it, along with an administration fee. Or the Program may make a cash settlement with the purchaser and invoice the builder for the cost. In either case, if the invoice is not paid the builder would receive a Notice of Proposal to revoke his registration as a builder.

This Notice of Proposal is the document that can be appealed to CRAT.

IMPORTANT: Builders should not ignore invoices from ONHWP for the above-mentioned settlements unless they intend to take the case to CRAT. If they do ignore them, and then do not resolve the case before the Tribunal, their registration would be revoked and any further construction they do could result in their being prosecuted as an unregistered builder.

In the Interest of your Clients

Whether you're representing a buyer, a builder, or someone else involved in the new home industry, you should be familiar with the Act and the Ontario New Home Warranty Program (ONHWP), which administers it. You can get additional information including the legislation, regulations and associated documents, from your local ONHWP office.

When you represent a builder or vendor

Everyone building or selling new homes in Ontario must register with ONHWP. This includes not only builders and vendors themselves but also their trustees, mortgagees, receivers and liquidators. A builder is defined as a company that provides the materials and labor involved in home construction. A vendor is any person or company selling new homes. When a new corporation is created to make or sell new homes, it must be registered separately.

A mortgage lender who takes over a completed new home that is ready for occupancy under power of sale or foreclosure becomes the vendor of that home and must also register with us. The home must be re-enrolled. Failure to register could mean a fine of up to \$100,000 for a corporation or \$25,000 for an individual or corporate director.

Builders must enrol each new home with ONHWP, after getting a building permit and before starting construction. A home is defined as:

- A self-contained single-family dwelling, either detached or attached by a common wall to one or more others;
- A building consisting of two self-contained one-family dwellings under a single ownership;
- A condominium unit, including the common elements;
- Any dwelling that meets the definition of a home according to the regulations of the Act, including its additional structures or appendages .

When you represent a buyer

First, make sure the builder is registered and the home enrolled with ONHWP. Ask the builder for his registration number and the home's enrolment number, and check these with us.

For condominiums, there should be an enrolment number for each unit, as well as one for the common elements.

Your client should be told their rights under the Act and how to protect them. Review the Agreement of Purchase and Sale with your client. To be covered by warranty, items exceeding the standards of the Ontario Building Code must be listed on the Agreement.

At closing, your client will complete the Certificate of Completion and Possession provided by the builder. Make sure your client first inspects the home, and lists any defects. Signing the CCP does not sign away your clients rights to require that the builder repair any warranted defects that arise later, up to the warranty's expiration date. Once we receive a copy of the CCP from the builder, we'll send the Warranty Certificate directly to your client.

Condominium buyers should also complete a CCP to receive a Warranty Certificate for their own individual unit. Once the condominium corporation is registered, the builder will prepare another CCP for the common elements of the building, to be signed by the condominium's board of directors, who will receive a separate Warranty Certificate for those areas.

If your client is buying a resale home less than seven years old, it should still have some warranty coverage. The warranty is transferred to the new owner, and you can check on the remaining coverage by calling the nearest ONHWP office.

- **The Program has a variety of helpful literature for both home purchasers and builders. Call your nearest Regional Office for information.**
- **We can also supply a guest speaker for your meeting or seminar, to talk about the Ontario New Home Warranty Program and you.**

Offices of the Ontario New Home Warranty Program

Head Office:

5160 Yonge St.,
6th Floor,
Northeast Tower
North York, Ontario M2N 6L9
(416) 229-9200

Regional Offices:

Whitby (Serving Regions of Durham, Haliburton, Northumberland, Peterborough, Victoria and the cities of Toronto, Scarborough and East York.)

114 Dundas St. East, Suite 201
Whitby, Ontario L1N 2H7 (416) 668-6462
Toronto Line: (416) 427-3832

Hamilton (Serving Regions of Hamilton Wentworth, Brant, Niagara, Haldimand-Norfolk & Halton)

883 Upper Wentworth Street, Suite 310
Hamilton, Ontario L9A 4Y6 (416) 575-7377

Kitchener (Serving Regions of Middlesex, Oxford, Wellington, Essex, Kent, Lambton, Elgin, Perth, Huron & Waterloo)

150 Edna Street, 2nd floor
Kitchener, Ontario N2H 6S1
(519) 744-0861/744-4454

Newmarket (Serving Regions of York, Muskoka and Simcoe)

1091 Gorham St.
Newmarket, Ontario L3Y 7V1 (416) 836-5700
Toll Free: 1-800-263-1299

Ottawa (Serving Ottawa Carleton, Lanark, Frontenac, Renfrew, Dundas, Glengarry, Prescott, Stormont, Russell, Grenville, Leeds, Lennox & Addington, Hastings & Prince Edward)

1130 Morrison Dr., Suite 250
Ottawa, Ontario K2H 9N6 (613) 829-8877

Sudbury (Serving Regions of Nipissing, Parry Sound, Sudbury, Temiskaming, Cochrane, Algoma & Manitoulin)

1899 LaSalle Boulevard
Sudbury, Ontario P3A 2A3 (705) 560-7100

Thunder Bay (Serving Thunder Bay, Kenora & Rainy River)

91 Cumberland Street South, Suite 215
Thunder Bay, Ontario P7B 6A7 (807) 345-2026

Brampton (Serving Regions of Peel, Dufferin, Grey & Bruce and the cities of York, Etobicoke, and North York.)

2 County Court Blvd., Suite 435
Brampton, Ontario L6W 3W8 (416) 455-0500

Publication Toll free number: 1-800-668-7504

